

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 04-20 (REVISED)

January 20, 2004

TO: All Regional Directors, Officers-in-Charge
and Resident Officers

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Default Judgments

On January 12, 2003, the Board published an official notice in the Federal Register to announce that it has revised the extant rules and regulations to expand the application of provisions governing the filing of motions for summary judgment or dismissal to the filing of motions for default judgment.¹

Sections 102.24 (Motions), 102.35 (Duties and Powers of Administrative Law Judges), and 102.114 (Filing and Service of Papers) of the Board's Rules and Regulations provide for rulings by the Board or administrative law judges on the filing of motions for summary judgment or motions for dismissal prior to the hearing. Historically, the Board has treated motions for judgment based on the respondent's failure to file an answer to the complaint or compliance specification as motions for "summary judgment." However, the Board has determined that the term "default judgment" more accurately describes a judgment issued for failure to file and answer² and the Board's recent decisions have adopted this term.³

The revisions to the rules are merely changes in nomenclature and are not intended to alter the manner in which the Board processes or resolves motions for judgment or dismissal based on the respondent's failure to file an answer. The Board will continue to process motions for default judgment as it had when they were filed as motions for summary judgment. An exception to this, however, is that motions for default judgment will not be subject to the requirements in Section 102.24(b) that motions for summary judgment or dismissal be filed no later than 28 days before the hearing. The Board has determined that the 28-day limitation is unnecessary where the respondent has failed to file an answer.

¹ The Federal Register Notice can be found under the "Public Notices" button on the Agency's internet website.

² See *NLRB v. Aaron Convalescent Home*, 479 F.2d 736, 739 (6th Cir. 1973).

³ See, e.g., *Rosedale Fabricators, LLC*, 340 NLRB No. 67 (2003); *Hawk One Security*, 339 NLRB No. 65 (2003); and *Malik Roofing Corp.*, 338 NLRB No. 141 (2003).

If you have any questions regarding this memorandum, please contact your AGC or Deputy or the undersigned.

/s/
R.A.S.

cc: NLRBU
Release to the Public

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